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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,668	08/31/2001	Mehran Bashiri	S63.2-9867	3795
490	7590	07/17/2007		
VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344			EXAMINER COMSTOCK, DAVID C	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 07/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/944,668

Applicant(s)

BASHIRI ET AL.

Examiner

David Comstock

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 5,16-29,31,32 and 43 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 41,42,44 and 45 is/are allowed.
- 6) ☒ Claim(s) 1-4,6-15,30 and 33-40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 19 March 2007, with respect to the outstanding rejection have been fully considered. In response to Applicant's arguments, the previous grounds of rejection have been withdrawn and replaced by a new ground of rejection. Accordingly, prosecution is hereby reopened, the finality of the last Office action is withdrawn, and the new grounds of rejection are set forth below.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not properly state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be *material to patentability* as defined in 37 CFR 1.56.

Specifically, the language of the declaration should read: "I acknowledge the duty to disclose information which is material to patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-15, 30 and 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter (2002/0107560) in view of Lock et al. (5,591,223).

Richter discloses a stent (1) having a longitudinal axis comprising: a non-woven tubular element comprising a plurality of interconnected struts (FIG. 3, FIG. 4) which form at least one continuous pathway which extends all the way around the longitudinal axis, the interconnected struts having an outside surface facing outside the stent, an inner surface facing the longitudinal axis, and a side portion there between, the side portion having a thickness defined by the radial distance between the outer surface and the inner surface; the stent further comprising at least one of the struts being a frangible temporary strut (4), the frangible temporary strut restraining at least two of the interconnected struts from self-expansion, at least a portion of the stent constructed and arranged to self-expand upon breaking of the at least one frangible temporary strut (paragraph 0009), the thickness of a portion of the frangible temporary strut being substantially narrower than the thickness of any other portion of the frangible temporary strut (paragraphs 0020, 0026). Richter discloses that the frangible temporary strut is constructed from a different material than the interconnected struts (paragraphs

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0021,0022,0026). Richter discloses the claimed invention except for explicitly disclosing radial self-expansion. Lock et al. disclose a stent 10 comprising frangible portions, e.g. 22, that restrain the stent from self-expansion until re-expansion may be necessary to accommodate vessel change (see, e.g. Figs. 2 and 3 and col. 1, lines 7-11 and col. 2, lines 14-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the stent of Richter with frangible portions that restrain the stent from self-expansion until re-expansion may be necessary, in view of Lock et al., in order to accommodate vessel change. It would have been further obvious to have provided the device with any of numerous ranges of rupture pressures, since it has been held that where the general conditions of a claim are disclosed in the prior art, as here, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Allowable Subject Matter

Claims 41, 42, 44 and 45 are allowed.

Conclusion

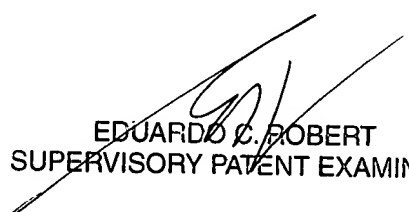
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo

Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. Comstock



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER